2000-2020 Davidson Avenue Realty Corporation *and* Service Employees International Union, Local 32E, AFL–CIO. Case 2–CA–33097

June 21, 2001

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN AND WALSH

Upon a charge filed on June 26, 2000, by the Service Employees International Union, Local 32E, AFL–CIO, the General Counsel of the National Labor Relations Board issued a complaint on January 26, 2001, against 2000-2020 Davidson Avenue Realty Corporation, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served with copies of the charge and complaint, the Respondent failed to file an answer.

On May 10, 2001, the General Counsel filed a Motion for Summary Judgment with the Board. On May 11, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Petition for Summary Judgment disclose that the Region, by letter dated April 5, 2001, notified the Respondent that unless an answer were received by April 12, 2001, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business in Bronx, New York, has owned and operated various buildings in the New York Metropolitan area, including residential apartment buildings located at 2000-2020 Davidson Avenue, Bronx, New York. In the calendar year preceding the issuance of the complaint, the Respondent, in the course and conduct of its business operations, derived gross revenue in excess of $500,000, and purchased and received at its buildings located within the State of New York goods, materials, and supplies valued in excess of $5000 directly from businesses located outside the State of New York. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Steve Green has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act, and an agent acting on its behalf.

In or about March 2000, the Respondent purchased the residential apartment buildings located at 2000, 2012, 2016, and 2020 Davidson Avenue, Bronx, New York (the Building) from JMG Management, Inc. (JMG) and since then has continued to operate the Building in basically unchanged form, and employed as a majority of its employees individuals who were previously employees of JMG. Based on these facts, the Respondent has continued as the employing entity and is a successor to JMG.[1]

The following employees constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All employees engaged in servicing, maintaining, cleaning and performing work of allied nature at 2000-12-16-20 Davidson Avenue, Bronx, New York, excluding all other employees, office clerical employees, professional employees, and guards and supervisors as defined in the Act.

For many years, and at all times material here, the Union has been the designated exclusive collective-bargaining representative of the unit and has been recognized as the representative by prior owners of the Building, including JMG. This recognition has been embodied in successive collective-bargaining agreements, the most

[1] See *NLRB v. Burns Security Services*, 406 U.S. 272 (1972).

recent of which was effective from September 1, 1997, through September 1, 2000.

At all material times until about March 2000, based on Section 9(a) of the Act, the Union had been the exclusive collective-bargaining representative of the unit employees employed by JMG. At all times since March 2000, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Respondent's unit employees.

On or about May 3 and again on May 31, 2000, by letter, the Union requested that the Respondent meet and bargain with the Union concerning wages, hours, and other terms and conditions of employment for unit employees. At all times since May 3, 2000, the Respondent has failed and refused to respond to the Union's letters and has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit employees.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has failed and refused to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of its employees, we shall order the Respondent, on request, to bargain with the Service Employees International Union, Local 32E, AFL–CIO and, if an agreement is reached, to embody the understanding in a signed agreement.

ORDER

The National Labor Relations Board orders that the Respondent, 2000-2020 Davidson Avenue Realty Corporation, Bronx, New York, its officers, agents, successors, and assigns, shall

1.Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of its unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain collectively and in good faith with the Service Employees International Union, Local 32E, AFL–CIO, as the exclusive collective-bargaining representative of its employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All employees engaged in servicing, maintaining, cleaning and performing work of allied nature at 2000-12-16-20 Davidson Avenue, Bronx, New York, excluding all other employees, office clerical employees, professional employees, and guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Bronx, New York, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 3, 2000.

[2] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice "Posted by Order of the National Labor Relations Board'' shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 21, 2001

Peter J. Hurtgen, Chairman

Wilma B. Liebman, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of our unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain collectively and in good faith with the Service Employees International Union, Local 32E, AFL–CIO, as the exclusive collective-bargaining representative of our employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All employees engaged in servicing, maintaining, cleaning and performing work of allied nature at 2000-12-16-20 Davidson Avenue, Bronx, New York, excluding all other employees, office clerical employees, professional employees, and guards and supervisors as defined in the Act.

2000-2020 DAVIDSON AVENUE REALTY CORPORATION